

Remarks

Claims 4, 6-11, and 14 are pending in the application. Claims 4, 6-11, and 14 have been rejected.

Rejection under 15 U.S.C. § 103(a)

Claims 4 and 6-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilmour, U. S. Patent 6,155,998 ("Gilmour") in view of Plath et al., U.S. Patent No. 5,311,972 ("Plath"). Applicant respectfully traverses this rejection, as hereinafter set forth.

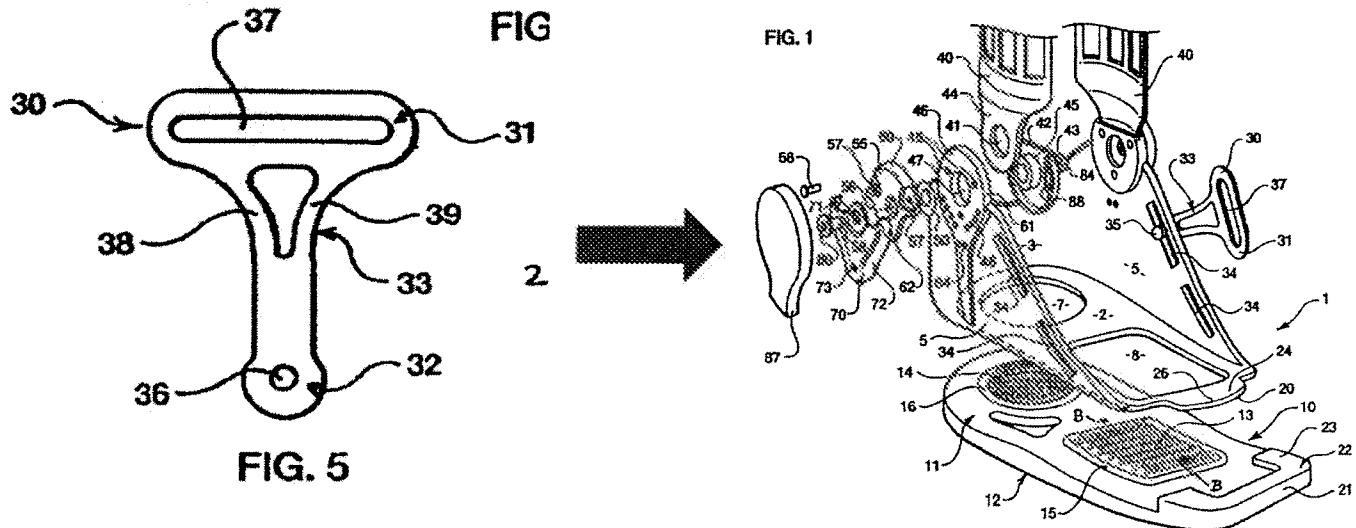
To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, the Examiner must determine whether there is "*an apparent reason to combine* the known elements in the fashion claimed by the patent at issue." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds "cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, *the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure*.

DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co., 464 F.3d 1356, 1367

(Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 4, 6-10 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations. Applicants submit that Gilmour in view of Plath does not render obvious under 35 U.S.C. §103(a) the presently claimed invention of independent claim 6 and dependent claims 4 and 7-10 because independent claim 6 includes claim limitations not taught or suggested in the cited references. Specifically, neither Gilmour nor Plath discloses, teaches or suggests the limitation "a frame having at least one set of apertures and a slot" as found in amended claim 6.

Gilmour's frame does not include at least one set of apertures and a slot, as is apparent from Figure 5 below, (see, e.g., Fig. 5, no. 36; Col. 3, lines 45- 49):



The chafe in Gilmour is made of a flexible and resilient material (Col. 3, lines 47-48) which allows the chafe to adjust without additional mounting apertures or slots. In direct contrast, in the present

invention the adjustment is provided by the multiple apertures and sawtooth slot, which provide multiple mounting positions and adjustments to the wearer.

As set forth above, Gilmour fails to disclose each and every limitation taught by independent claim 6. Plath fails to cure the deficiencies of Gilmour. Plath is directed toward luggage with attachable components. (Title, Abstract) The clasp, as shown in Figure 2 provides only one aperture, not the aperture and slot combination of amended claim 6.

Plath does not contain a suggestion or motivation to combine with Gilmour, but rather teaches away from the combination. The present invention's aperture and slot configuration is not taught, disclosed or suggested by Plath. Plath requires pressure to lock the smaller portion of the aperture into place. (Col. 4, lines 3-13) In the present invention, the configuration of the slot and the aperture configuration retain the shaft and head by positioning and without the need to apply force to the chafe.

Furthermore, combining Gilmour and Plath does not result in the present invention. The combination would produce a walker with a strap that can only be positioned in one way, and installed with pressure, based on the configuration of the single aperture. This contravenes a need for the invention, specifically, the need to adjust the position of the straps, for example, over a bandaged foot.

In view of the above it is respectfully requested that the rejection of claims 4 and 6-10 as unpatentable over Gilmour in view of Plath be withdrawn.

Claims 11 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilmour and Plath in view of Coy et al., U.S. Patent No. 5,836,626 (“Coy”). As set forth above,

Gilmour fails to disclose each and every limitation taught by independent claim 6, and Plath does not cure these deficiencies.

Claims 11 and 14 are allowable as depending indirectly from an allowable base claim and are also allowable for the reasons given below.

Coy fails to cure the deficiencies of Gilmour and Plath. In addition, Coy does not teach a slot having an upper edge formed to a saw tooth pattern, the edges of each upwardly extending part, in use, being such that the head of the stud will be retained therein, as recited in claims 11 and 14. Nor does Coy teach that an aperture and a sawtooth slot be provided as found in amended claim 6.

Coy teaches a slot (see, e.g., Fig. 3, no. 22) with notches (see, e.g., Fig. 3, no. 21) with parallel sides (see, e.g., Fig. 3, no. 21) to secure a retaining pin (see, e.g., Fig. 3, no. 28). The present invention requires a slot with a saw-toothed upper edge to allow for the retention of the stud of a chafe and alternatively to allow the insertion of a strap (see, e.g., Claims 11 and 14; Paragraphs 18, 35 and 37). The use of notches with parallel sides in the present invention would not allow for insertion of the stud of a chafe at the lower part of the notched edge and retention of the head of the stud at the upper part of the edge. Also, Coy does not teach the alternative insertion of a strap into the slot. Rather, the notches present in Coy (see, e.g., Fig. 3, no. 21) would damage a strap if it were inserted into the slot (see, e.g., Fig. 3, no. 22). Moreover, use of a triangular saw-toothed pattern would not work in Coy. Use of a triangular saw-toothed pattern in Coy would allow lateral force on the securing member (see, e.g., Fig. 3, no. 17) to be transferred into compressive force on the spring (see, e.g., Fig. 3, no. 26), thereby allowing the retaining pin (see, e.g., Fig. 3, no. 28) to leave its notch, allowing the door to open, and causing

the lock to fail. One of ordinary skill in the art would recognize that Coy and the present invention are not compatible, and would expect the use of Coy to fail in the present invention.

The saw-toothed pattern is not a mere design consideration as it accomplishes two stated purposes. First, the saw-toothed pattern allows for the retention of the stud head in the upper edges of the saw-toothed pattern (see, e.g., Claims 11 and 14; Paragraphs 18, 35 and 37). Second, the straps themselves can be passed through the saw-toothed slot, where the teeth will effect a gripping motion on the strap, helping to maintain the strap in the position that it has been originally located (see, e.g., Paragraph 37), thus providing multiple means of adjustment.

Additionally, Coy may not be properly combined with Gilmour for at least the following reasons. Coy is concerned with the art of door locks. One of ordinary skill in the art of orthopedic walkers would not be motivated to look to the field of door locks for solutions to the problems encountered in designing an orthopedic walker. The notched slot (see, e.g., Fig. 2, no. 22, 22) in Coy only solves the problem of allowing a securement member (see, e.g., Fig. 2, no. 17) to slide along a plate (see, e.g., Fig. 2, no. 14) and fails to solve the problem of allowing chafe insertion along a slot or alternatively allowing insertion of a strap in the slot. One of ordinary skill in the art of orthopedic walkers simply would not be expected to look to a solution of allowing a securement member to slide along a plate in a static door lock when trying to solve the problem of allowing chafe insertion or alternative insertion of a strap in a slot in an orthopedic walker frame to permit adjustment in a walking and flexing device.

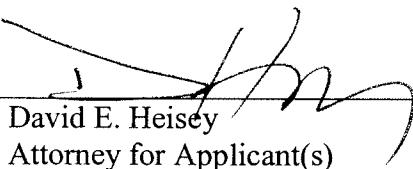
In view of the above, it is respectfully requested that the rejection of claims 11 and 14 as unpatentable over Gilmour in view of Plath in view of Coy be withdrawn.

Conclusion

Based on the foregoing, favorable reconsideration and allowance of claims 4, 6-11 and 14 is solicited. If necessary, the Commissioner is hereby authorized in this and concurrent replies to charge payment (or credit any overpayment) to Deposit Account No. 19-1853 for any additional required fees.

Date: August 22, 2008

Respectfully submitted,



David E. Heisley
Attorney for Applicant(s)
Reg. No. 42,651

SHEPPARD MULLIN RICHTER
& HAMPTON LLP
333 S. Hope Street, 48th Floor
Los Angeles, CA 90071
Telephone No.: (858) 720-8936
Facsimile No.: (858) 509-3691